

STANDARD AGREEMENT

STD. 213 (NEW 06/03)

AGREEMENT NUMBER

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below

STATE AGENCY'S NAME

State Energy Resources Conservation and Development Commission (Commission)

CONTRACTOR'S NAME

2. The term of this Agreement is: _____ The effective date of this Agreement is either the start date or the approval date by the Dept. of General Services, whichever is later. No work shall commence until the effective date.

3. The maximum amount of this Agreement is: \$

4. The parties agree to comply with the terms and conditions of the following Exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work
Exhibit A - Attachments

Pages
Pages

Exhibit B – Budget Detail and Payment Provisions
Exhibit B - Attachments

Pages
Pages

Exhibit C* – General Terms and Conditions

GTC 306

Check mark one item below as Exhibit D:

- ☒ Exhibit D – Special Terms and Conditions (Attached hereto as part of this Agreement)
☐ **Exhibit D** - *Special Terms and Conditions

Pages

Exhibit E – Additional Provisions
Exhibit E - Attachment

Pages

Exhibit F – Contacts

Page

Exhibit G - Definitions

Pages

Exhibit H - Subcontract Flow-Down Provisions

Pages

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

State Energy Resources Conservation and Development Commission (Commission)

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

California Department of General
Services Use Only

☐ Exempt per:

Cheryl Raedel, Contracts Office Manager	
ADDRESS	
1516 Ninth Street, Sacramento, CA 95814	

Exhibit A SCOPE OF WORK

GLOSSARY

Specific terms and acronyms used throughout this work statement are defined as follows:

Acronym	Definition
CPR	Critical Project Review
PAC	Project Advisory Committee
UCC.1	Uniform Commercial Code (Financing Statement)
	<i>(Insert additional rows as needed.)</i>

TECHNICAL TASK LIST

(Insert the Task numbers and Task names for your Agreement. Put an "X" in the CPR column next to the Tasks that contain a Critical Project Review).

Task #	CPR	Task Name
1	N/A	Administration
2		
3		
Etc.		
N-1	N/A	Technology Transfer Activities
N	N/A	Production Readiness Plan

KEY NAME LIST

(Insert the Task numbers and the Key names for each Task in your Project. Add additional lines as needed.)

Task #	Key Personnel	Major Subcontractor(s)	Key Partner(s)
1	<Name>	<Name>	<Name>
2	<Name>	<Name>	<Name>
3	<Name>	<Name>	<Name>
4	<Name>	<Name>	<Name>
N-1	<Name>	<Name>	<Name>
N	<Name>	<Name>	<Name>

Problem Statement

<please see instructions>

Relationship to PIER Goals

This Agreement meets the PIER Goal of ... *<please see instructions>*

Goals of the Agreement

The goal of this Agreement is to ... *<please see instructions>*

Objectives of the Agreement

The objectives of this Agreement are to... *<please see instructions>*

TASK 1.0 ADMINISTRATION**MEETINGS****Task 1.1 Attend Kick-off Meeting**

The goal of this task is to establish the lines of communication and procedures for implementing this Agreement.

The Contractor shall:

- Attend a “kick-off” meeting with the Commission Contract Manager, the Contracts Officer, and a representative of the Accounting Office. The Contractor shall bring their Project Manager, Contracts Officer, Accounting Officer, and others designated by the Commission Contract Manager to this meeting. The administrative and technical aspects of this Agreement will be discussed at the meeting. Prior to the kick-off meeting, the Commission Contract Manager will provide an agenda to all potential meeting participants.

The administrative portion of the meeting shall include, but not be limited to, the following:

- Terms and conditions of the Agreement
- CPRs (Task 1.2)
- Match fund documentation (Task 1.7)
- Permit documentation (Task 1.8)

The technical portion of the meeting shall include, but not be limited to, the following:

- The Commission Contract Manager’s expectations for accomplishing tasks described in the Scope of Work;
- An updated Schedule of Deliverables
- An updated Gantt Chart
- Progress Reports (Task 1.4)
- Technical Deliverables (Task 1.5)
- Final Report (Task 1.6)

- [Establish the PAC \(Task 1.10\) \(optional\)](#)
- [PAC Meetings \(Task 1.11\) \(optional\)](#)

The Commission Contract Manager shall designate the date and location of this meeting.

Contractor Deliverables:

- An Updated Schedule of Deliverables
- An Updated Gantt Chart
- An Updated List of Match Funds
- An Updated List of Permits
- [Schedule for Recruiting PAC Members \(optional\)](#)

Commission Contract Manager Deliverables:

- Final Report Instructions

Task 1.2 CPR Meetings

The goal of this task is to determine if the project should continue to receive Commission funding to complete this Agreement and if it should, are there any modifications that need to be made to the tasks, deliverables, schedule or budget.

CPRs provide the opportunity for frank discussions between the Commission and the Contractor. CPRs generally take place at key, predetermined points in the Agreement, as determined by the Commission Contract Manager and as shown in the Technical Task List above and in the Schedule of Deliverables. However, the Commission Contract Manager may schedule additional CPRs as necessary, and any additional costs will be borne by the Contractor.

Participants include the Commission Contract Manager and the Contractor, and may include the Commission Contracts Officer, the PIER Program Team Lead, other Commission staff and Management as well as other individuals selected by the Commission Contract Manager to provide support to the Commission.

The Commission Contract Manager shall:

- Determine the location, date and time of each CPR meeting with the Contractor. These meetings generally take place at the Commission, but they may take place at another location.
- Send the Contractor the agenda and a list of expected participants in advance of each CPR. If applicable, the agenda shall include a discussion on both match funding and permits.
- Conduct and make a record of each CPR meeting. One of the outcomes of this meeting will be a schedule for providing the written determination described below.
- Determine whether to continue the project, and if continuing, whether or not to modify the tasks, schedule, deliverables and budget for the remainder of the Agreement, including not proceeding with one or more tasks. If the Commission Contract Manager concludes that

satisfactory progress is not being made, this conclusion will be referred to the Commission's Research, Development and Demonstration Policy Committee for its concurrence.

- Provide the Contractor with a written determination in accordance with the schedule. The written response may include a requirement for the Contractor to revise one or more deliverable(s) that were included in the CPR.

The Contractor shall:

- Prepare a CPR Report for each CPR that discusses the progress of the Agreement toward achieving its goals and objectives. This report shall include recommendations and conclusions regarding continued work of the projects. This report shall be submitted along with any other deliverables identified in this Scope of Work. Submit these documents to the Commission Contract Manager and any other designated reviewers at least 15 working days in advance of each CPR meeting.
- Present the required information at each CPR meeting and participate in a discussion about the Agreement.

Contractor Deliverables:

- CPR Report(s)
- CPR deliverables identified in the Scope of Work

Commission Contract Manager Deliverables:

- Agenda and a List of Expected Participants
- Schedule for Written Determination
- Written Determination

Task 1.3 Final Meeting

The goal of this task is to closeout this Agreement.

The Contractor shall:

- Meet with the Commission to present the findings, conclusions, and recommendations. The final meeting must be completed during the closeout of this Agreement.

This meeting will be attended by, at a minimum, the Contractor, the Commission Contracts Officer, and the Commission Contract Manager. The technical and administrative aspects of Agreement closeout will be discussed at the meeting, which may be two separate meetings at the discretion of the Commission Contract Manager.

The technical portion of the meeting shall present findings, conclusions, and recommended next steps (if any) for the Agreement. The Commission Contract Manager will determine the appropriate meeting participants.

The administrative portion of the meeting shall be a discussion with the Commission Contract Manager and the Contracts Officer about the following Agreement closeout items:

- What to do with any state-owned equipment (Options)
 - Need to file UCC.1 form re: Commission's interest in patented technology
 - Commission's request for specific "generated" data (not already provided in Agreement deliverables)
 - Need to document Contractor's disclosure of "subject inventions" developed under the Agreement
 - "Surviving" Agreement provisions, such as repayment provisions and confidential deliverables
 - Final invoicing and release of retention
- Prepare a schedule for completing the closeout activities for this Agreement.

Deliverables:

- Written documentation of meeting agreements and all pertinent information
- Schedule for completing closeout activities

REPORTING

See Exhibit D, Reports/Deliverables/Records.

Task 1.4 Monthly Progress Reports

The goal of this task is to periodically verify that satisfactory and continued progress is made towards achieving the research objectives of this Agreement.

The Contractor shall:

- Prepare progress reports which summarize all Agreement activities conducted by the Contractor for the reporting period, including an assessment of the ability to complete the Agreement within the current budget and any anticipated cost overruns. Each progress report is due to the Commission Contract Manager within 5 working days after the end of the reporting period. Attachment A-2, Progress Report Format, provides the recommended specifications.

Deliverables:

- Monthly Progress Reports

Task 1.5 Test Plans, Technical Reports and Interim Deliverables

The goal of this task is to set forth the general requirements for submitting test plans, technical reports and other interim deliverables, unless described differently in the Technical Tasks.

The Contractor shall:

- Submit a draft of each deliverable listed in the Technical Tasks to the Commission Contract Manager for review and comment in accordance with the approved Schedule of Deliverables.

The Commission Contract Manager will provide written comments back to the Contractor on the draft deliverable within 5 working days of receipt. Once agreement has been reached on the draft, the Contractor shall submit the final deliverable to the Commission Contract Manager. The Commission Contract Manager shall provide written approval of the final deliverable within 2 working days of receipt. Key elements from this deliverable shall be included in the Final Report for this project.

Task 1.6 Final Report

The goal of this task is to prepare a comprehensive written Final Report that describes the original purpose, approach, results and conclusions of the work done under this Agreement. The Commission Contract Manager will review and approve the Final Report. The Final Report must be completed on or before the termination date of the Agreement. The Contractor is to follow PIER Final Report guidelines published on the Energy Commission's Web Site at www.energy.ca.gov/contracts/index.html.

The Final Report shall be a public document. If the Contractor has obtained confidential status from the Commission and will be preparing a confidential version of the Final Report as well, the Contractor shall perform the following subtasks for both the public and confidential versions of the Final Report.

Task 1.6.1 Final Report Outline

The Contractor shall:

- Prepare a draft outline of the Final Report.
- Submit the draft outline of Final Report to the Commission Contract Manager for review and approval. The Commission Contract Manager will provide written comments back to the Contractor on the draft outline within 5 working days of receipt. Once agreement has been reached on the draft, the Contractor shall submit the final outline to the Commission Contract Manager. The Commission Contract Manager shall provide written approval of the final outline within 2 working days of receipt.

Deliverables:

- Draft Outline of the Final Report
- Final Outline of the Final Report

Task 1.6.2 Final Report

The Contractor shall:

- Prepare the draft Final Report for this Agreement in accordance with the approved outline.
- Submit the draft Final Report to the Commission Contract Manager for review and comment. The Commission Contract Manager will provide written comments within 10 working days of receipt.

Once agreement on the draft Final Report has been reached, the Commission Contract Manager shall forward the electronic version of this report to the PIER Technology Transfer Group for final editing. Once final editing is completed, the Commission Contract Manager shall provide written approval to the Contractor within 2 working days.

- Submit one bound copy of the Final Report with the final invoice.

Deliverables:

- Draft Final Report
- Final Report

MATCH FUNDS, PERMITS, AND ELECTRONIC FILE FORMAT

Task 1.7 Identify and Obtain Matching Funds

The goal of this task is to ensure that the match funds planned for this Agreement are obtained for and applied to this Agreement during the term of this Agreement.

The costs to obtain and document match fund commitments are not reimbursable through this Agreement. While the PIER budget for this task will be zero dollars, the Contractor may utilize match funds for this task. Match funds shall be spent concurrently or in advance of PIER funds during the term of this Agreement. Match funds must be identified in writing, and the associated commitments obtained before the Contractor can incur any costs for which the Contractor will request reimbursement.

The Contractor shall:

- Prepare a letter documenting the match funding committed to this Agreement and submit it to the Commission Contract Manager at least 2 working days prior to the kick-off meeting:
 1. If no match funds were part of the proposal that led to the Commission awarding this Agreement and none have been identified at the time this Agreement starts, then state such in the letter.
 2. If match funds were a part of the proposal that led to the Commission awarding this Agreement, then provide in the letter:
 - A list of the match funds that identifies the:
 - Amount of each cash match fund, its source, including a contact name, address and telephone number and the task(s) to which the match funds will be applied.
 - Amount of each in-kind contribution, a description, documented market or book value, and its source, including a contact name, address and telephone number and the task(s) to which the match funds will be applied. If the in-kind contribution is equipment or other tangible or real property, the

Contractor shall identify its owner and provide a contact name, address and telephone number, and the address where the property is located.

- A copy of the letter of commitment from an authorized representative of each source of cash match funding or in-kind contributions that these funds or contributions have been secured.
- Discuss match funds and the implications to the Agreement if they are significantly reduced or not obtained as committed, at the kick-off meeting. If applicable, match funds will be included as a line item in the progress reports and will be a topic at CPR meetings.
- Provide the appropriate information to the Commission Contract Manager if during the course of the Agreement additional match funds are received.
- Notify the Commission Contract Manager within 5 working days if during the course of the Agreement existing match funds are reduced. Reduction in match funds may trigger an additional CPR.

Deliverables:

- A letter regarding Match Funds or stating that no Match Funds are provided
- Letter(s) for New Match Funds
- A copy of each Match Fund commitment letter
- Letter that Match Funds were Reduced (if applicable)

Task 1.8 Identify and Obtain Required Permits

The goal of this task is to obtain all permits required for work completed under this Agreement in advance of the date they are needed to keep the Agreement schedule on track.

Permit costs and the expenses associated with obtaining permits are not reimbursable under this Agreement. While the PIER budget for this task will be zero dollars, the Contractor shall show match funds for this task. Permits must be identified in writing and obtained before the Contractor can incur any costs related to the use of the permits for which the Contractor will request reimbursement.

The Contractor shall:

- Prepare a letter documenting the permits required to conduct this Agreement and submit it to the Commission Contract Manager at least 2 working days prior to the kick-off meeting:
 1. If there are no permits required at the start of this Agreement, then state such in the letter.
 2. If it is known at the beginning of the Agreement that permits will be required during the course of the Agreement, provide in the letter:
 - A list of the permits that identifies the:
 - Type of permit

- Name, address and telephone number of the permitting jurisdictions or lead agencies
 - Schedule the Contractor will follow in applying for and obtaining these permits
- The list of permits and the schedule for obtaining them will be discussed at the kick-off meeting, and a timetable for submitting the updated list, schedule and the copies of the permits will be developed. The implications to the Agreement if the permits are not obtained in a timely fashion or are denied will also be discussed. If applicable, permits will be included as a line item in the progress reports and will be a topic at CPR meetings.
- If during the course of the Agreement additional permits become necessary, then provide the appropriate information on each permit and an updated schedule to the Commission Contract Manager.
- As permits are obtained, send a copy of each approved permit to the Commission Contract Manager.
- If during the course of the Agreement permits are not obtained on time or are denied, notify the Commission Contract Manager within 5 working days. Either of these events may trigger an additional CPR.

Deliverables:

- A letter documenting the Permits or stating that no Permits are required
- Updated list of Permits as they change during the Term of the Agreement
- Updated schedule for acquiring Permits as it changes during the Term of the Agreement
- A copy of each approved Permit

Task 1.9 Electronic File Format

The goal of this task is to unify the formats of electronic data and documents provided to the Commission as contract deliverables. Another goal is to establish the computer platforms, operating systems and software that will be required to review and approve all software deliverables.

The Contractor shall:

- Deliver documents to the Commission Contract Manager in the following formats:
 - Data sets shall be in Microsoft (MS) Access or MS Excel file format.
 - PC-based text documents shall be in MS Word file format.
 - Documents intended for public distribution shall be in PDF file format, with the native file format provided as well.
 - Project management documents shall be in MS Project file format.
- Request exemptions to the electronic file format in writing at least 90 days before the deliverable is submitted.

Deliverables:

- A letter requesting exemption from the Electronic File Format (if applicable)

PAC (Optional)**Task 1.10 Establish the PAC**

The goal of this task is to create an advisory committee for this Agreement.

The PAC should be composed of diverse professionals. The number can vary depending on potential interest and time availability. The Contractor's Project Manager and the Commission Contract Manager shall act as co-chairs of the PAC. The exact composition of the PAC may change as the need warrants. PAC members serve at the discretion of the Commission Contract Manager.

The PAC may be composed of qualified professionals spanning the following types of disciplines:

- Researchers knowledgeable about the project subject matter
- Members of the trades who will apply the results of the project (e.g., designers, engineers, architects, contractors, and trade representatives)
- Public Interest Market Transformation Implementers
- Product Developers relevant to project subject matter
- U.S. Department of Energy Research Manager
- Public Interest Environmental Groups
- Utility Representatives
- Members of the relevant technical society committees

The purpose of the PAC is to:

- Provide guidance in research direction. The guidance may include scope of research; research methodologies; timing; coordination with other research. The guidance may be based on:
 - technical area expertise
 - knowledge of market applications
 - linkages between the agreement work and other past, present or future research (both public and private sectors) they are aware of in a particular area
- Review deliverables. Provide specific suggestions and recommendations for needed adjustments, refinements, or enhancement of the deliverables.
- Evaluate tangible benefits to California of this research and provide recommendations, as needed, to enhance tangible benefits.
- Provide recommendations regarding information dissemination, market pathways or commercialization strategies relevant to the research products.

The Contractor shall:

- Prepare a draft list of potential PAC members that includes name, company, physical and electronic address, and phone number and submit it to the Commission Contract Manager at least 2 working days prior to the kick-off meeting. This list will be discussed at the kick-off meeting and a schedule for recruiting members and holding the first PAC meeting will be developed.
- Recruit PAC members and ensure that each individual understands the member obligations described above, as well as the meeting schedule outlined in Task 1.11.
- Prepare the final list of PAC members.
- Submit letters of acceptance or other comparable documentation of commitment for each PAC member.

Deliverables:

- Draft List of PAC Members
- Final List of PAC Members
- Letters of acceptance, or other comparable documentation of commitment for each PAC Member

Task 1.11 Conduct PAC Meetings

The goal of this task is for the PAC to provide strategic guidance to this project by participating in regular meetings or teleconferences.

The Contractor shall:

- Discuss the PAC meeting schedule at the kick-off meeting. The number of face-to-face meetings and teleconferences and the location of PAC meetings shall be determined in consultation with the Commission Contract Manager. This draft schedule shall be presented to the PAC members during recruiting and finalized at the first PAC meeting.
- Organize and lead PAC meetings in accordance with the schedule. Changes to the schedule must be pre-approved in writing by the Commission Contract Manager.
- Prepare PAC meeting agenda(s) with back-up materials for agenda items.
- Prepare PAC meeting summaries, including recommended resolution of major PAC issues.

Deliverables:

- Draft PAC Meeting Schedule
- Final PAC Meeting Schedule
- PAC Meeting Agenda(s) with Back-up Materials for Agenda Items
- Written PAC meeting summaries, including recommended resolution of major PAC issues

TECHNICAL TASKS

Unless otherwise provided in the individual Task, the Contractor shall prepare all deliverables in accordance with the requirements in Task 1.5.

Task 2 (insert task name)

The goal of this task is to . . . *(Complete the sentence with a brief description of the goal(s). Please be brief, two to three sentences maximum. <please see instructions>)*

The Contractor shall:

- *(Insert verb in active tense) . . . (Complete the sentence.)*
 - *(Insert verb in active tense) . . . (Complete the sentence.)*
- Etc. *<please see instructions>*

Deliverables:

- 1st deliverable (name only)
 - 2nd deliverable (name only)
- Etc. *<please see instructions>*

Task 3 (insert task name)

The goal of this task is to . . . *(Complete the sentence with a brief description of the goal(s). Please be brief, two to three sentences maximum. <please see instructions>)*

The Contractor shall:

- *(Insert verb in active tense) . . . (Complete the sentence.)*
 - *(Insert verb in active tense) . . . (Complete the sentence.)*
- Etc. *<please see instructions>*

Deliverables:

- 1st deliverable (name only)
 - 2nd deliverable (name only)
- Etc. *<please see instructions>*

(add the appropriate number of tasks for your Agreement)

Task n-1 Technology Transfer Activities *(If applicable)*

The goal of this task is to develop a plan to make the knowledge gained, experimental results and lessons learned available to key decision-makers.

The Contractor shall:

- Prepare a Technology Transfer Plan. The plan shall explain how the knowledge gained in this project will be made available to the public. The level of detail expected is least for research-related projects and highest for demonstration projects. Key elements from this report shall be included in the Final Report for this project.

- Conduct technology transfer activities in accordance with the Technology Transfer Plan. These activities shall be reported in the Monthly Progress Reports.

Deliverables:

- Draft Technology Transfer Plan
- Final Technology Transfer Plan

Task n Production Readiness Plan *(If applicable)*

The goal of the plan is to determine the steps that will lead to the manufacturing of the technologies developed in this project or to the commercialization of the project's results.

The Contractor shall:

- Prepare a Production Readiness Plan. The degree of detail in the Production Readiness Plan discussion should be proportional to the complexity of producing or commercializing the proposed product and its state of development. The plan shall include, as appropriate, but not be limited to:
 - Identification of critical production processes, equipment, facilities, personnel resources, and support systems that will be needed to produce a commercially viable product;
 - Internal manufacturing facilities, as well as supplier technologies, capacity constraints imposed by the design under consideration, identification of design critical elements and the use of hazardous or non-recyclable materials. The product manufacturing effort may include "proof of production processes;"
 - A projected "should cost" for the product when in production;
 - The expected investment threshold to launch the commercial product;
 - An implementation plan to ramp up to full production.

Deliverables:

- Draft Production Readiness Plan
- Final Production Readiness Plan

EXHIBIT B
Budget Detail and Payment Provisions

1. **INVOICING PROCEDURES**

- A. For services satisfactorily rendered, and upon receipt and approval of invoices, the Energy Commission agrees to compensate Contractor for actual allowable expenditures incurred in accordance with Exhibit B, Budget Attachment. The rates in Exhibit B, Budget Attachment, are rate caps, or the maximum amount allowed to be billed. Contractor can only bill for actual expenses incurred for hours worked at the Contractor's actual direct labor, fringe, and indirect rates, not to exceed the rates specified in Exhibit B, Budget Attachment.
- B. Invoices shall be submitted in duplicate not more frequently than monthly. The following certification shall be included on each invoice and signed by an authorized official of the contractor:

I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received from any other sources, including but not limited to a Government Entity contract, subcontract or other procurement method.

- C. The Energy Commission will accept computer generated or electronically transmitted invoices provided Contractor sends a hard copy the same day to the Energy Commission, the address is noted below and in the Agreement Contact List.

California Energy Commission
Accounting Office, MS-2
1516 Ninth Street
Sacramento, California 95814

- D. A request for payment shall consist of, but is not limited to, the following. Contractor may use the sample invoice format from the **Energy Commission's Web Site** www.energy.ca.gov/contracts/index.html.
- 1) Agreement number, date prepared, and billing period.
 - 2) Contractor's actual hourly labor rates by individual.
 - 3) Operating expenses, including equipment, travel, miscellaneous.
 - 4) Subcontractor invoices, identify if a subcontractor is a California Certified Small Business or a Certified Disabled Veteran Business Enterprise.
 - 5) Fees (fringe, direct and indirect overheads, general and administrative, profit, etc.)
 - 6) Match fund expenditures, if applicable.
 - 7) By task: cumulative amounts, budgeted, billed to date, current billing, and balance of funds.
 - 8) Work Authorization number, if applicable.

E. As detailed in Exhibit A, Scope of Work:

- 1) A report that documents the progress of the work during the billing period, and
- 2) Any other deliverables due during the billing period.

2. **BUDGET CONTINGENCY CLAUSE**

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other consideration under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to Contractor to reflect the reduced amount.

3. **TRAVEL AND PER DIEM RATES**

Contractor shall be reimbursed for travel and per diem expenses using the same rates provided to non-represented state employees. Contractor must pay for travel in excess of these rates. Contractor may obtain current rates from the Energy Commission's Web Site at www.energy.ca.gov/contracts/index.html.

- A. Travel identified in Exhibit B, Budget Attachment is approved and does not require further authorization.
- B. Travel that is not included in Exhibit B, Budget Attachment shall require prior written authorization from the Contract Manager. The Energy Commission will reimburse travel expenses from Contractor's office location.
- C. Contractor must retain documentation of travel expenses in its financial records listed by trip including dates and times of departure and return. Receipts for travel expenses claimed must be retained by Contractor (receipts are not required for travel meals or incidentals within current allowable rates).

4. **RETENTION**

The Energy Commission shall retain from each invoice ten per cent (10%) of that invoice, excluding equipment invoices. The retained amount shall be held and released only upon approval that work has been satisfactorily completed and the Final Report (if required) has been received and approved. Contractor must submit a separate invoice for the retained amount.

Retention may be released upon completion of tasks that are considered separate and distinct, i.e., the task is a stand-alone piece of work and could be done without the other tasks. Exhibit B, Budget Attachment, identifies the tasks for which retention may be released prior to the end of the Agreement. Tasks for administration or management of the Agreement and/or subcontractors are not considered separate and distinct tasks.

5. **PAYMENT TERMS**

Check all that apply:

- ☐ Monthly
- ☐ Quarterly
- ☐ One-Time Payment
- ☐ Itemized
- ☐ Flat Rate
- ☐ In Arrears
- ☐ Advance Payment to Public Prime Contractor Not to Exceed \$_____ or _____ % of the Agreement Amount
- ☐ Advance Payment to Private Prime Contractor for Public Subcontractor, (PRC section 25620.3(d)) Not to Exceed \$_____ or _____ % of the Subcontract Amount
- ☐ Reimbursement/Revenue
- ☐ Other (Explain)

6. **CONDITIONS FOR PAYMENT**

- A. Payment shall only be made in accordance with Exhibit B, Budget Attachment.
- B. Each request for payment is subject to the Contract Manager's approval.
- C. Payments shall be made to Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered and for which additional evidence is not required to determine its validity. The invoice will be disputed if all deliverables due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed, Contractor will be notified via a Dispute Notification Form within 15 working days of receipt of the invoice.
- D. Payment will be made in accordance with, and within the time specified, in Government Code Chapter 4.5, commencing with Section 927.
- E. Final invoice must be received by the Energy Commission no later than 30 calendar days after the Agreement termination date.
- F. Reimbursement for costs identified in contractor invoices has not and will not be received from any other sources, including but not limited to a Government Entity contract or subcontract or other procurement method.

7. **RECORDKEEPING, COST ACCOUNTING AND AUDITING**

- A. Cost Accounting

Contractor agrees to keep separate, complete, and correct accounting of the costs involved in developing, installing, constructing, and testing of Project-Related Products and Rights funded under the Energy Commission-funded portion of this Agreement as well as keep separate, complete, and correct account of the Economic Benefits from Project-Related Products and Rights.

B. Accounting Procedures

Contractor's costs shall be determined on the basis of Contractor's accounting system procedures and practices employed as of the effective date of this Agreement. Contractor's cost accounting practices used in accumulating and reporting costs during the performance of this Agreement shall be consistent with the practices used in estimating costs for any proposal to which this Agreement relates; provided that such practices are consistent with the other terms of this Agreement and provided, further, that such costs may be accumulated and reported in greater detail during performance of this Agreement. Contractor's accounting system shall distinguish between direct costs and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this Agreement.

C. Allowability of Costs

Except as provided for in this Agreement, Contractor shall use the applicable Federal Office of Management and Budget (OMB) Circulars A-87, A-21, A-122, or Federal Acquisition Regulations (FAR) Part 31 in determining allowable and unallowable costs. In the event of a conflict, this Agreement takes precedence over the OMB Circulars and/or FAR. Factors to be considered in determining whether an individual item of cost is allowable include: (i) reasonableness of the item; (ii) allowability of the item to the work; (iii) the appropriate use of applicable Federal OMB Circulars or FAR; and, (iv) the terms and conditions of this Agreement. Applicable OMB circulars and FAR may be found at www.whitehouse.gov/omb and www.arnet.gov/far/.

1) Allowable Costs

Allowable costs may include all costs, direct and indirect, incurred in the performance of work identified in Contractor's proposal, if applicable, and capped as specified in Exhibit B, Budget Attachment. Costs must be incurred within the term of the Agreement. The Energy Commission will pay for State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the Energy Commission pursuant to this Agreement.

2) Unallowable Costs

Some examples of unallowable costs include: contingency costs, imputed costs, fines and penalties, losses on agreements, excess profit taxes, and increased rates and fees for this Agreement.

The State of California is exempt from Federal excise taxes, and no payment will be made for any taxes levied on employee's wages.

D. Audit Rights

Contractor shall maintain books, records, documents, and other evidence, based on the procedures set forth above, sufficient to reflect properly all costs claimed to have been incurred in performing this Agreement. The Energy Commission, an agency of the State or, at the Energy Commission's option, a public accounting firm designated by the Energy Commission, may audit such accounting records at all reasonable times with prior notice by the Energy Commission. The Energy Commission shall bear the expense of such audits. It

is the intent of the parties that such audits shall ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years following payment by the Energy Commission of Contractor's final invoice. However, performance of any such interim audits by the Energy Commission does not preclude further audit.

E. Audit Cost

The cost of the audit shall be borne by the Energy Commission except when the results of the audit reveal an error detrimental to the Energy Commission that exceeds ten percent (10%) of the amount audited, or \$5000 (whichever is greater); or if a royalty audit, ten percent (10%) of the total royalties due in the period audited. In this event, Contractor agrees to reimburse the Energy Commission for reasonable costs and expenses incurred by the Energy Commission in conducting such audit.

F. Refund to the Energy Commission

If the Energy Commission determines that any invoiced and paid amounts exceed the actual allowable and incurred costs, Contractor shall repay such amounts to the Energy Commission within thirty (30) days of request or as otherwise agreed to in writing by the Energy Commission and Contractor. If the Energy Commission does not receive such repayments, the Energy Commission shall be entitled to withhold further payments to Contractor.

8. **BUDGET DETAIL**

Budget Detail is contained in the Attachment to this Exhibit.

EXHIBIT C
General Terms and Conditions

PLEASE NOTE: This page will not be included with the final Agreement. The General Terms and Conditions will be included in the Agreement by reference to Internet site: www.dgs.ca.gov/contracts choose **Standard Language for use in Standard Agreements or if this Agreement is with another State agency, choose Interagency Agreement.** The exact terms to be used will be those appearing on the Web Site the date the Agreement is signed by Contractor.

EXHIBIT D
Special Terms and Conditions

1. **AGREEMENT MANAGEMENT**

- A. The Contractor Project Manager may not be replaced without Contract Manager's prior written approval. Such approval shall not be unreasonably withheld. The Contractor Project Manager is responsible for the day-to-day Project status, decisions and communications with the Contract Manager.
- B. The Energy Commission may change the Contract Manager by notice given to Contractor at any time signed by the Commission Contracts Officer. The Contract Manager is responsible for the day-to-day Agreement status, decisions and communications with the Contractor Project Manager. The Contract Manager will review and approve all Project deliverables, reports and invoices.

2. **PERSONNEL, SUBCONTRACTORS, AND DISABLED VETERAN BUSINESS ENTERPRISES (DVBES)**

A. Key Personnel

Contractor's Key Personnel may not be substituted without the Contract Manager's prior written approval. Such approval shall not be unreasonably withheld.

B. Key Subcontractors

Contractor's Key Subcontractors may not be substituted without the Contract Manager's prior written approval. Such approval shall not be unreasonably withheld.

C. Agreements with Subcontractors

If subcontractors are needed to perform any portion of this Agreement, the following criteria must be met and Contractor shall manage the performance of the subcontractors.

- 1) Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the State and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
- 2) Contractor shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of the subcontractors for work performed in accordance with the terms of this Agreement. Contractor shall be responsible for scheduling and assigning subcontractors to specific tasks in the manner described in this Agreement, coordinating subcontractor accessibility to

Energy Commission staff, and submitting completed products to the Contract Manager. Upon request by the Contract Manager, Contractor shall provide with copies of all contractual agreements with key subcontractors.

- 3) Contractors who are subcontracting with University of California may use the terms and conditions negotiated by the Energy Commission with University of California for their subcontracts. Contractors who are subcontracting with DOE may use the terms and conditions negotiated by the Energy Commission with DOE for their subcontracts.
- 4) Flowdown provisions that shall be included in subcontracts are listed below. The language to include in each subcontract is detailed in Exhibit H. This language is similar to the provisions in this Agreement, but has been modified for use in subcontracts.
 - Standard of Performance
 - Recordkeeping, Cost Accounting & Auditing
 - Audit
 - Purchase of Equipment
 - Rights of Parties Regarding Deliverables, Data, and Intellectual Property
 - Limitation on Disclosure of Information
 - No Further Assignments
 - Non-Discrimination
 - Stop Work
 - Termination
 - Access to Sites and Records
 - Conflict of Interest
 - Legal Notice
 - Survival
- 5) All subcontracts entered into pursuant to this Agreement shall be subject to examination and audit by the Bureau of State Audits for a period of three (3) years after final payment under the Agreement.

D. Additions, Removal, or Substitutions of Subcontractors

Any subcontractor change shall be subject to the following conditions:

- 1) Contractor shall provide the Energy Commission with a copy of its contracting policies and procedures for selecting subcontractors. The Commission Contracts Officer shall evaluate the Contractor's process to determine if it is in substantial accord with the State's process. The Commission Contracts Officer will provide a written determination to the Contractor. The Commission Contracts Officer will retain this set of contracting policies and procedures until the final audit of Project records.
- 2) If Contractor's process is acceptable, Contractor may use its process to solicit and select subcontractors. If, however, Contractor's process does not substantially meet the State's requirements, Contractor shall solicit a minimum of three (3) bids or provide justification, in advance, to the Commission Contracts Officer, as to why a competitive process is not appropriate.

- 3) Thirty (30) days prior to using new policies and procedures, the Contractor shall notify the Commission Contracts Officer and provide a detailed, written description of the changes. The Commission Contracts Officer will provide a written determination to the Contractor stating whether the revised policies and procedures are still in substantial accord with the State's process.

E. Disabled Veteran Business Enterprise (DVBE) Changes

The Contractor shall use the DVBE companies identified in this Agreement. Contractor's failure to adhere to the DVBE participation may be cause for termination. In the event a replacement of a DVBE is necessary, the Contractor shall request written approval, in advance, from the Contract Manager and the Commission Contracts Officer. The procedure for replacing any DVBE is:

1. Contractor shall inform Contract Manager and Commission Contracts Officer in writing of the reason for the DVBE replacement.
2. Contractor shall attempt to replace the DVBE with a new DVBE providing the same services or identify other services in the Agreement a new DVBE could provide. Contractor shall complete revised DVBE certification forms (provided by the Commission Contracts Officer) identifying the new DVBE. If replacement is not a DVBE, Contractor shall complete steps in compliance with good faith efforts and submit appropriate DVBE documentation to the Commission Contracts Officer.

3. **CHANGES TO THE AGREEMENT**

A. Budget Reallocations

Contractor shall provide reasonable advance notification to the Contract Manager of any anticipated budget reallocations. Budget reallocations that do not substantially change the Scope of Work will be made in the following manner. Contractor may reallocate a task budget up to fifteen percent (15%) of the original task amount, with prior written notification to the Contract Manager. Reallocations of more than fifteen percent (15%) of an original task budget require prior written approval of the Contract Manager and the Energy Commission's Program Team Lead. Contract Manager will notify the Contractor Project Manager in writing of the approval within ten (10) working days. The Contract Manager shall send approved changes in a revised Exhibit B, Budget Attachment to the Commission Contracts Officer.

B. Significant Changes

Significant changes to this Agreement must be approved at an Energy Commission business meeting through a formal amendment. Significant changes include, but are not limited to:

- change of Contractor's legal name
- change of Contractor
- changes in order to disencumber funds
- changes to Exhibit A that reasonably modify the purpose of the Agreement

- changes to Exhibit A that extend the due dates beyond the term of the Agreement
- changes to Exhibit B that increase the amount of the Agreement
- changes to Exhibit B that increase rates or fees
- reallocations to Exhibit B, Budget Attachment that substantially change Exhibit A.

Contractor shall submit a request in writing to the Contract Manager with a copy to the Commission Contracts Officer for any significant change. The Contract Manager will notify the Contractor Project Manager of the appropriate Energy Commission action within ten (10) working days.

C. Non-Significant Changes

Changes that are not significant to the Agreement do not need to be approved at an Energy Commission Business Meeting through a formal amendment. These changes shall be documented in a Letter of Agreement.

4. **STANDARD OF PERFORMANCE**

Contractor shall be responsible in the performance of Contractor's/subcontractor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in scientific and engineering research fields. Any costs for failure to meet these standards, or otherwise defective services, which require re-performance, as directed by Contract Manager or its designee, shall be borne in total by the Contractor/subcontractor and not the Energy Commission. In the event the Contractor/subcontractor fails to perform in accordance with the above standard the following will apply. Nothing contained in this clause is intended to limit any of the rights or remedies that the Energy Commission may have under law.

- A. Contractor/subcontractor will re-perform, at its own expense, any task that was not performed to the reasonable satisfaction of the Contract Manager. Any work re-performed pursuant to this clause shall be completed within the time limitations originally set forth for the specific task involved. Contractor/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Energy Commission.
- B. The Contract Manager shall provide a new schedule for the re-performance of any task pursuant to this clause in the event that re-performance of a task within the original time limitations is not feasible.
- C. If the Contract Manager directs the Contractor not to re-perform a task, the Contract Manager and Contractor Project Manager shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Energy Commission's right to reimbursement.
- D. The failure of a Project to achieve the technical or economic goals stated in the Scope of Work is not a basis for the Energy Commission to determine that the work is unacceptable, unless the work conducted by the Contractor/subcontractor is deemed by the Energy Commission to have failed the foregoing standard of performance.
- E. In the event that Contractor/subcontractor fails to perform in accordance with the foregoing standard of performance, the Contract Manager and the Contractor Project Manager shall

seek to negotiate in good faith an equitable resolution satisfactory to both parties. If such a resolution cannot be reached, the parties shall work through the Energy Commission's dispute resolution process described in the Disputes clause.

5. **PERFORMANCE EVALUATION**

Consistent with Public Contract Code Sections 10367 through 10371, the Energy Commission shall, upon completion of this Agreement, prepare a performance evaluation of the Contractor. Upon filing an unsatisfactory evaluation with the Department of General Services, Office of Legal Services (DGS) the Energy Commission shall notify and send a copy of the evaluation to the Contractor within fifteen (15) days. The Contractor shall have thirty (30) days to prepare and send statements to the Energy Commission and DGS defending Contractor's performance. The Contractor's statement shall be filed with the evaluation in the Energy Commission's Contract file and with DGS for a period of thirty-six (36) months and shall not be a public record.

6. **REPORTS, DELIVERABLES, AND INFORMATION DISCLOSURE**

A. Reports and Deliverables

- 1) All **public** reports and deliverables shall be delivered to the Energy Commission Accounting Office address listed in Exhibit F.
- 2) All **confidential** reports and deliverables shall be delivered to the Contracts Officer listed in Exhibit F in a sealed envelope marked "Confidential Deliverable."

B. Legal and Copyright Notices

All documents prepared for this Agreement that will be released to the public in hard copy, electronic, or Web Site format including but not limited to reports, deliverables, articles submitted for publication, and all reprints, shall include the following:

LEGAL NOTICE

This report was prepared as a result of work sponsored by the California Energy Commission (Energy Commission). It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this report; nor does any party represent that the use of this information will not infringe upon privately owned rights. This report has not been approved or disapproved by the Energy Commission nor has the Energy Commission passed upon the accuracy or adequacy of the information in this report.

COPYRIGHT NOTICE

**©[YEAR OF FIRST PUBLICATION OF DELIVERABLE],
[THE COPYRIGHT HOLDER'S NAME]
ALL RIGHTS RESERVED.**

C. Limitations on Contractor Disclosure of Agreement Information

- 1) Contractor must receive approval from the Contract Manager before disclosing to any third party the contents of any draft deliverable or report.
- 2) After any document submitted has become a part of the public records of the State, Contractor may, if it wishes to do so at its own expense, publish or utilize the document, and shall include the legal and copyright notices required above.
- 3) In the event any public statement is made by the Energy Commission as to the role of Contractor or the content of any deliverable or report, the Contractor may, if it believes such statement to be incorrect, state publicly what it believes is correct.
- 4) No record that is provided by the Energy Commission to Contractor for Contractor's use in performing this Agreement and which has been designated as Confidential Information, or is the subject of a pending application for confidential designation, except as provided in Title 20, CCR section 2505 and following (and amendments), shall be disclosed by Contractor, unless disclosure is ordered by a court of competent jurisdiction (Title 20 CCR section 2507.). At the election of the Contract Manager, the Contractor, its employees and any subcontractor shall execute a confidentiality agreement, supplied by the Contract Manager or Commission Contracts Officer.
- 5) Contractor acknowledges that each of its officers, employees, and subcontractors who are involved in the performance of this Agreement will be informed of these restrictions and be directed to abide by the above terms.

D. Limitations on Energy Commission Disclosure of Information Contractor Considers Confidential

- 1) Data provided to the Energy Commission by Contractor, which Data the Energy Commission has not already designated as Confidential Information and which Contractor seeks to have designated as confidential, or is the subject of a pending application for confidential designation, shall not be disclosed by the Energy Commission except as provided in Title 20 CCR Sections 2506 and 2507 (and amendments), unless disclosure is ordered by a court of competent jurisdiction.
- 2) It is the Energy Commission's intent to use and release Project results such as deliverables and Data in a manner calculated to further PIER while protecting proprietary or patentable interests of the parties. Therefore, the Energy Commission agrees not to disclose information that Contractor considers confidential, without first providing a copy of the disclosure document for review and comment by Contractor. Contractor shall have no less than ten (10) working

days for review and comment and, if appropriate, to make an application for confidential designation pursuant to Title 20 CCR section 2505 (and amendments) on some or all of the information. The Energy Commission shall consider the comments of Contractor and use professional judgment in revising the disclosure document accordingly.

7. **PUBLIC HEARINGS**

If public hearings on the Scope of Work are held during the period of the Agreement, Contractor will make available to testify the personnel assigned to this Agreement. The Energy Commission will reimburse Contractor for compensation and travel of the personnel at the Agreement rates for the testimony which the Energy Commission requests.

8. **DISPUTES**

In the event of a Contract dispute or grievance between Contractor and the Energy Commission, both parties shall follow the procedure below. Contractor shall continue with the responsibilities under this Agreement during any dispute.

A. Commission Dispute Resolution

The Contractor shall first discuss the problem informally with the Contract Manager. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the Commission Contracts Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Commission Contracts Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The Commission Contracts Officer shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the Contractor disagree with the decision, the Contractor may appeal to the second level.

The Contractor must prepare a letter indicating why the decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents, along with a copy of the Commission Contracts Officer's response. This letter shall be sent to the Energy Commission's Executive Director within ten (10) working days from receipt of the decision. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter. The Executive Director may inform the Energy Commission of the decision at an Energy Commission business meeting. Should the Contractor disagree with the Executive Director's decision, the Contractor may appeal to the Energy Commission at a regularly scheduled business meeting. Contractor will be provided with the current procedures for placing the appeal on an Energy Commission business meeting agenda.

B. Binding Arbitration

Should the Energy Commission's Dispute Resolution procedure above fail to resolve an Agreement dispute or grievance to the satisfaction of either party, the Contractor and Energy Commission mutually may elect to have the dispute or grievance resolved

through binding arbitration. If one party does not agree, the matter shall not be submitted to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the AAA commercial arbitration rules. If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final and may not be appealed to a court through the civil process. However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later six (6) months after the date of the Agreement's termination, despite when the dispute or grievance arose, and despite the applicable statute of limitations for a suit based on the dispute or grievance. If the parties do not mutually agree to arbitration, the parties agree that the sole forum to resolve a dispute is California state court.

The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;
- 2) The expense of a stenographer shall be born by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;
- 4) Each party shall bear the cost of its own travel expenses;
- 5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of the award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of Agreement funds. Both parties must agree, in writing, to utilize Agreement funds to pay for arbitration costs.

9. **TERMINATION**

A. Purpose

The parties agree that because the Energy Commission is a state entity and contracts on behalf of all Californian ratepayers, it is necessary for the Energy Commission to be able to terminate, at once, upon the default of Contractor and to proceed with the work required under the Agreement in any manner the Energy Commission deems proper. Contractor specifically acknowledges that the termination of the Agreement by the Energy Commission under the terms set forth below is an essential term of the Agreement, without which the Energy Commission would not enter into the Agreement. Contractor further agrees that upon any of the events triggering the termination of the Agreement by the Energy Commission, the Energy Commission has the right to terminate the Agreement, and it would constitute bad faith of the Contractor to interfere with the immediate termination of the Agreement by the Energy Commission.

B. Breach

The Energy Commission shall provide the Contractor written notice of intent to terminate due to Contractor's breach. Contractor will have fifteen (15) calendar days to fully

perform or cure the breach. In the event Contractor does not cure the breach within fifteen (15) days, the Energy Commission may, without prejudice to any of its other remedies, terminate this Agreement upon five (5) calendar days written notice to Contractor. In such event, Energy Commission shall pay Contractor only the reasonable value of the satisfactorily performed services rendered by Contractor before the notice of termination, as may be agreed upon by the parties or determined by a court of law, but not in excess of the Agreement maximum payable.

C. For Cause

The Energy Commission may, for cause, and at its option, terminate this Agreement upon giving thirty (30) calendar days advance written notice to Contractor. In such event, Contractor agrees to use all reasonable efforts to mitigate its expenses and obligations. Energy Commission will pay Contractor for services rendered and expenses incurred within thirty (30) days after notice of termination which could not by reasonable efforts of Contractor have been avoided, but not in excess of Agreement maximum payable. Contractor agrees to relinquish possession of equipment purchased for this Agreement with Energy Commission funds to Energy Commission, or Contractor may, with approval of Energy Commission, purchase the equipment as provided by the terms of this Agreement.

The term “for cause” includes, but is not limited to, the following reasons:

- Partial or complete loss of Match Funds;
- Reorganization to a business entity unsatisfactory to the Energy Commission;
- Retention or hiring of subcontractors, or replacement or addition of Key Personnel that fail to perform to the standards and requirements of this Agreement;
- Failure to utilize the DVBE subcontractors/vendors in this Agreement and/or Contractor’s proposal;
- Contractor is not able to pay its debts as they become due and/or Contractor is in default of an obligation that impacts Contractor’s ability to perform under this Agreement;
- Significant change in State or Energy Commission policy such that the work or product being funded would not be supported by the Energy Commission; or
- In the case of a technical support Agreement, changes in Energy Commission staff such that Energy Commission staff can do the work or product being funded.

10. **WAIVER**

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Energy Commission to enforce at any time any of the provisions of this Agreement, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Agreement or any part of it or the right of the Energy Commission to thereafter enforce each and every such provision.

11. **CAPTIONS**

The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.

12. **PRIOR DEALINGS, CUSTOM OR TRADE USAGE**

In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.

13. **NOTICE**

Legal notice must be given using any of the following delivery methods: U.S. Mail, overnight mail, or personal delivery, providing evidence of receipt to the person identified in Exhibit F of this Agreement for legal notices. Delivery by fax or e-mail is not considered legal notice for the purpose of this paragraph. This paragraph is not intended to apply to normal, daily communication between the parties related to progress of the work. This paragraph applies to situations where notice is required to be given by this Agreement or the parties are asserting their legal rights and remedies.

Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In which case, the effective date shall be postponed until the next business day.

14. **STOP WORK**

The Commission Contracts Officer may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work tasks in this Agreement. Stop work orders may be issued for reasons such as a Project exceeding budget, standard of performance, out of scope work, delay in Project schedule, misrepresentations and the like.

- A. Compliance. Upon receipt of such stop work order, Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- B. Equitable Adjustment. An equitable adjustment shall be made by Energy Commission based upon a written request by Contractor. Such adjustment request must be made by Contractor within thirty (30) days from the date of the stop work order.
- C. Canceling a Stop Work Order. Contractor shall resume the work only upon receipt of written instructions from the Commission Contracts Officer.

15. **RIGHTS OF PARTIES REGARDING DELIVERABLES, DATA, AND INTELLECTUAL PROPERTY**

A. Energy Commission's Rights in Deliverables

Deliverables and reports specified for delivery to the Energy Commission under this Agreement shall become the property of the Energy Commission. The Energy Commission may use, publish, and reproduce the deliverables and reports subject to the

provisions of the Reports clause, "Limitations on Energy Commission Disclosure of Information."

B. Rights in Technical, Generated, and Deliverable Data

1) Contractor's Rights

All Data (Technical, Generated and Deliverable Data) produced under this Agreement shall be the property of the Contractor, limited by the license retained by the Energy Commission in 2) below, and the rights the Energy Commission has in deliverables specified above in Clause A.

2) Energy Commission's Rights

Contractor shall provide the Contract Manager and any designated reviewer(s) with a copy of all Technical, Generated and Deliverable Data produced under the Agreement, when requested. Contractor is not required to copy and submit Data the Contract Manager has identified as being unusable to the Energy Commission and the PIER program such as raw data that is too disaggregated or voluminous for practical application. Such Data shall be retained at the Contractor's facility for inspection, review and possible copying by the Contract Manager for a minimum of three (3) years after final payment unless a longer period of records retention is stipulated.

Upon request by Contract Manager, Contractor shall provide the Contract Manager and any designated reviewer(s) access to review Technical and Generated Data produced in the course of this Agreement that is not requested to be delivered to the Energy Commission.

For all Data (Technical, Generated and Deliverable) produced under this Agreement, the Energy Commission retains a no-cost, non-exclusive, non-transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, produce and to authorize others to produce, translate, publish and use the Data, subject to the provisions of the Reports clause "Limitation on Energy Commission Disclosure of Information."

C. Exclusive Remedy

In the event the Energy Commission intends to publish or has disclosed Data the Contractor considers confidential, the Contractor's exclusive remedy is a civil court action for injunctive relief. Such court action shall be filed in Sacramento County, California.

D. Waiver of Consequential Damages

IN NO EVENT WILL THE ENERGY COMMISSION BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY FOR THE DISCLOSURE OF CONFIDENTIAL INFORMATION OR INFORMATION CONTRACTOR CONSIDERS CONFIDENTIAL, EVEN IF THE ENERGY COMMISSION HAS

BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. DAMAGES THAT THE ENERGY COMMISSION WILL NOT BE RESPONSIBLE FOR INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFIT; LOSS OF SAVINGS OR REVENUE; LOSS OF GOODWILL; LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT; COST OF CAPITAL; COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES, OR SERVICES; DOWNTIME; THE CLAIMS OF THIRD PARTIES INCLUDING CUSTOMERS; AND INJURY TO PROPERTY.

E. Proprietary Data

Proprietary Data owned by the Contractor shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of Energy Commission's access to the same and the testimony available regarding the same shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable or to establish a baseline for repayment purposes. Upon request by Contract Manager, Contractor shall provide the Contract Manager and any designated reviewer(s) access to review Contractor's Proprietary Data produced in the course of this Agreement that is not requested to be delivered to the Energy Commission. The Energy Commission shall not disclose any Contractor Proprietary Data accessed or reviewed to any third party.

F. Preservation of Data

Any Data that is reserved to the Contractor by the express terms hereof, and Proprietary Data and Trade Secrets that have been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, shall be preserved by the Contractor at the Contractor's own expense for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated.

G. Destruction of Data

Before the expiration of three (3) years or the stipulated records retention period and before changing the form of or destroying any Data (including Technical, Generated, Deliverable and Proprietary) or Trade Secrets, the Contractor shall notify Energy Commission of any such contemplated action and Energy Commission may, within thirty (30) days after said notification, determine whether it desires said Data to be further preserved. If Energy Commission so elects, the expense of further preserving said Data shall be paid for by the Energy Commission. Contractor agrees that Energy Commission may at its own expense, have reasonable access to said Data throughout the time during which said Data is preserved. Contractor agrees to use its best efforts to identify competent witnesses to testify in any court of law regarding said Data or, at Energy Commission's expense, to furnish such competent witnesses.

H. Patent Rights

Patent rights for Subject Inventions will be the property of Contractor, subject to the Energy Commission retaining a no-cost, nonexclusive, nontransferable, irrevocable, royalty-free, worldwide perpetual license to use or have practiced for or on behalf of the State of California the Subject Invention(s) for governmental purposes. Contractor must

obtain agreements to effectuate this clause with all persons or entities, except for the U.S. Department of Energy (DOE), obtaining ownership interest in the patented Subject Invention(s). Previously documented (whether patented or unpatented under the patent laws of the United States of America or any foreign country) inventions are exempt from this sub clause.

I. March-In Rights

The Contractor shall forfeit and assign to the Energy Commission, at the Energy Commission's request, all rights to a Subject Invention if either: 1) Contractor fails to apply for a patent on Subject Inventions(s) developed under this Agreement within six (6) months of conceiving or first actually reducing the technology to practice, or, 2) Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Subject Invention. In this event, the Contractor agrees to relinquish all rights, subject to DOE reserved rights, to the Subject Invention to the Energy Commission. The Energy Commission will have the unfettered right to use and/or dispose of the rights in whatever manner it deems most suitable to help transfer the Technology into the market place, including but not limited to, seeking patent protection, or licensing the Subject Invention.

J. Energy Commission's Rights to Invention

Contractor and all persons and/or entities obtaining an ownership interest in Subject Invention(s) shall include within the specification of any United States patent application, and any patent issuing thereon covering a Subject Invention, the following statement:

THIS INVENTION WAS MADE WITH STATE OF CALIFORNIA SUPPORT UNDER CALIFORNIA ENERGY COMMISSION AGREEMENT NUMBER «AGREEMENT NUMBER». THE ENERGY COMMISSION HAS CERTAIN RIGHTS TO THIS INVENTION.

K. Energy Commission's Interest in Inventions

If Contractor or any subcontractor perfects a patent application on any Subject Invention, Contractor shall notify the Commission Contract Manager and Energy Commission Contracts Officer. Energy Commission Contracts Officer will complete and file a Uniform Commercial Code (UCC.1) Financing Statement with the Secretary of State's Office.

L. Copyrights

- 1) Copyrightable work first produced under this Agreement shall be owned by the Contractor, limited by the license granted to the Energy Commission in 2) below.
- 2) Contractor agrees to grant the Energy Commission a royalty-free, no-cost, nonexclusive, irrevocable, nontransferable, worldwide, perpetual license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all copyrightable work first produced or composed in the performance of this Agreement.
- 3) Contractor will apply copyright notices to all documents prepared for this Agreement that will be released to the public including reports, deliverables,

articles submitted for publication, and all reprints, using the following form or such other form as may be reasonably specified by Energy Commission.

©[YEAR OF FIRST PUBLICATION OF DELIVERABLE],
[THE COPYRIGHT HOLDER'S NAME].
ALL RIGHTS RESERVED.

4) Software

In the event software is developed that is not a deliverable under the Agreement, Contractor shall have the right to copyright and/or patent such software and grants the Energy Commission a royalty-free, no-cost, non-exclusive, irrevocable, non-transferable, worldwide, perpetual license to produce and use the software, its derivatives and upgrades for governmental purposes.

M. Intellectual Property Indemnity

Contractor warrants that Contractor will not, in supplying work under this Agreement's Scope of Work, knowingly infringe or misappropriate any intellectual property right of a third party, and that it will conduct a reasonable investigation of the intellectual property rights of third parties to avoid such infringement. Contractor will defend and indemnify Energy Commission from and against any claim, lawsuit or other proceeding, loss, cost, liability or expense (including court costs and reasonable fees of attorneys and other professionals) to the extent arising out of: (i) any third party claim that a deliverable infringes any patent, copyright, trade secret or other intellectual property right of any third party, or (ii) any third party claim arising out of the negligent or other tortious act(s) or omission(s) by the Contractor, its employees, subcontractors or agents, in connection with or related to the deliverables or the Contractor's performance thereof under this Agreement.

16. **PURCHASE OF EQUIPMENT**

- A. Equipment identified in this Agreement is approved for purchase.
- B. Equipment not identified in this Agreement shall be subject to prior written approval from the Contract Manager.
- C. All Equipment purchased with Energy Commission funds is subject to the following terms and conditions:
 - 1) The Commission Contracts Officer will complete and file a Uniform Commercial Code (UCC.1) Financing Statement with the Secretary of State's Office. Invoices for Equipment purchases associated with a UCC.1 will not be processed until the UCC.1 has been filed with the Secretary of State's Office.
 - 2) Title to all non-expendable Equipment purchased in part or in whole with Energy Commission funds shall remain with the Energy Commission.
 - 3) Contractor shall assume all risk for maintenance, repair, destruction and damage to Equipment while in the possession or subject to the control of Contractor. Contractor is not expected to repair or replace Equipment that is intended to

undergo significant modification or testing to the point of damage/destruction as part of the work described in Exhibit A, Scope of Work.

- D. Upon termination or completion of this Agreement, the Energy Commission may:
- 1) if requested by the Contractor, authorize the continued use of such Equipment to further energy research in the public interest;
 - 2) by mutual agreement with the Contractor, allow the Contractor to purchase such Equipment for an amount not to exceed the residual value of the Equipment as of the date of termination or completion of this Agreement; or,
 - 3) request that such Equipment be delivered to the Energy Commission with any costs incurred for such return to be borne by the Energy Commission.

17. **BUSINESS ACTIVITY REPORTING**

- A. Contractor shall promptly notify the Contract Manager of the occurrence of any of the following:
- 1) A change of address.
 - 2) A change in the business name or ownership.
 - 3) The existence of any litigation or other legal proceeding affecting this Agreement.
 - 4) The occurrence of any casualty or other loss to Project personnel, equipment or third parties.
 - 5) Contractor's receipt of notice of any claim or potential claim against Contractor for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Energy Commission's rights.
- B. Contractor shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the Energy Commission. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. In the event the Energy Commission is not satisfied that the new entity can perform as the original Contractor, the Energy Commission may terminate this Agreement as provided in the Termination clause.

18. **REVIEW AND NOTICE OF CONFLICTING TERMS**

Contractor warrants and attests that it has conducted a detailed review of the terms and conditions of its existing related third-party agreements and has identified all known or reasonably foreseeable conflicts with this Agreement's terms and conditions and has disclosed the conflicts in writing to the Energy Commission prior to executing this Agreement. In the event further conflicts are identified, Contractor and Energy Commission agree that these conflicts shall be addressed using the procedure described in the Disputes clause. Nothing in this Agreement is intended to nullify or obviate any prior third-party agreements executed by Contractor. However, the Energy Commission may terminate this Agreement if the conflict impairs or diminishes the value of this Agreement.

19. **ACCESS TO SITES AND RECORDS**

The Energy Commission staff or its representatives shall have reasonable access to all Project sites and to all records related to this Agreement.

20. **ASSURANCES**

The Energy Commission reserves the right to seek further written assurances from the Contractor and its team that the work of the Project under the Agreement will be performed consistent with the terms of the Agreement.

21. **SURVIVAL**

It is understood and agreed that certain Agreement clauses shall survive the completion or termination of this Agreement for any reason. The Agreement clauses include, but are not limited to:

- Recordkeeping, Cost Accounting and Auditing
- Indemnification
- Disputes
- Termination
- Rights of Parties Regarding Deliverables, Data, and Intellectual Property
- Purchase of Equipment
- Business Activity Reporting
- Access to Sites and Records
- Royalty Payments to Energy Commission

22. **INTERPRETATION OF TERMS**

This Agreement shall be conducted in accordance with the terms and conditions of the solicitation, if applicable. The Contractor's proposal is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the solicitation or proposal, this Agreement shall be considered controlling.

EXHIBIT E
Additional Provisions

The following clauses may or may not be included in Agreement, Contracts Officer to decide when developing this Exhibit if any of the following clauses apply to the specific Scope of Work or if an additional clause or term is needed.

1. **CONFIDENTIALITY**

A. Information Considered Confidential

All Contractor information considered confidential at the commencement of this Agreement is designated in the Attachment to this Exhibit.

B. Confidential Deliverables: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, the parties have identified in the Attachment to this Exhibit, specific Confidential Information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Contractor, as "Confidential" on each page of the document containing the Confidential Information and presented in a sealed package to the Commission Contracts Officer. (Non-confidential deliverables are submitted to the Accounting Office.) All Confidential Information will be contained in the "confidential" volume: no Confidential Information will be in the "public" volume.

C. Submittal of Unanticipated Confidential Information as a Deliverable

The Contractor and the Energy Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information not originally anticipated as a confidential deliverable. In this case, Contractor shall follow the procedures for a request for designation of Confidential Information specified in 20 CCR 2505. The Energy Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the Attachment to this Exhibit.

D. Disclosure of Confidential Information

Disclosure of Confidential Information by the Energy Commission may only be made pursuant to 20 CCR 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.

2. **INTELLECTUAL PROPERTY ITEMS DEVELOPED PRIOR TO THIS AGREEMENT**

A. Intellectual property information is designated in the Attachment to this Exhibit.

B. The Energy Commission makes no claim to intellectual property that existed prior to this Agreement and was developed without Energy Commission funding.

- C. The Contractor gives notice that the items listed in the Attachment to this Exhibit have been developed without Energy Commission funding and prior to the start of this Agreement. This list represents a brief description of the prior developed intellectual property. A detailed description of the intellectual property, as it exists on the effective date of this Agreement, may be necessary if Energy Commission funds are used to further develop the listed intellectual property. This information will assist the parties to make an informed decision regarding intellectual property rights and possible repayment obligations.

3. **ROYALTY PAYMENTS TO ENERGY COMMISSION**

In consideration of Energy Commission providing funding to Contractor, Contractor agrees to pay Energy Commission royalties under the following terms and conditions.

- A. Contractor agrees to pay Energy Commission a royalty of one and one-half percent (1.5%) of the Sale Price on Sales of all Project-Related Products and Rights that the Contractor receives.
- B. Contractor's obligation to make payments to Energy Commission shall commence from the date Project-Related Products and Rights are first sold and shall extend for a period of fifteen (15) years thereafter. Payments are payable in annual installments and are due the first day of March in the calendar year immediately following the year during which Contractor receives Gross Revenues.
- C. Early Buyout. Contractor has the option of paying its royalty obligations to Energy Commission without a pre-payment penalty, provided Contractor makes the royalty payment within two (2) years from the date at which royalties are first due to the Energy Commission. Royalty payment must be in a lump sum amount equal to two (2) times the amount of funds drawn down on the Agreement.
- D. Contractor agrees not to make any Sale, license, lease, gift or other transfer of any Project-Related Products and Rights with the intent of, or for the purpose of, depriving Energy Commission of royalties hereunder. Generally, this means that Contractor will not make any Sale, license, lease or other transfer of Project-Related Products and Rights for consideration other than fair market value. Further, Contractor agrees that such activity constitutes breach of this Agreement and that Contractor agrees to repay within sixty (60) days the amount due under C above (Early Buyout).
- E. Contractor acknowledges that a late payment of royalties owed to the Energy Commission will cause the Energy Commission to incur costs not contemplated by the parties. If a royalty payment is not paid when due, Contractor agrees to pay the Energy Commission a late fee equal to two percent (2%) of the payment due. Additionally, Contractor agrees that royalty payments not paid within fifteen (15) days of the due date shall thereupon become debt obligations of Contractor to the Energy Commission, due upon demand and bearing interest at the maximum interest rate allowed by law.
- F. Contractor shall maintain separate accounts within its financial and other records for purposes of tracking components of Sales and royalties due to Energy Commission under this Agreement.

- G. Payments to Energy Commission are subject to audit as provided for under the Recordkeeping, Cost Accounting and Auditing clause.
- H. In the event of default hereunder, Energy Commission shall be free to exercise all rights and remedies available to it herein, and under law and at equity. The Contractor's failure to pay when due, any amount due and payable shall cause default under this Agreement.

4. **CONFLICT OF INTEREST**

- A. Contractor agrees to continuously review new and upcoming projects in which members of the Contractor team may be involved for potential conflicts of interest. Contractor shall inform the Contract Manager as soon as a question arises about whether a potential conflict may exist. The Contract Manager and Commission's Chief Counsel's Office shall determine what constitutes a potential conflict of interest. The Energy Commission reserves the right to redirect work and funding on a project if the Commission's Chief Counsel's Office determines that there is a potential conflict of interest.
- B. The Contractor shall submit an economic interest statement (Fair Political Practices Commission's Form 700) from each employee or subcontractor whom the Energy Commission's Chief Counsel's Office, in consultation with the Contract Manager, determines is a consultant under the Political Reform Act and, thus, subject to the requirements and restrictions of the Act. Such determination will be based on the nature and duration of the work to be performed by the employee or subcontractor. The determination as to who is a consultant under the Political Reform Act shall be requested by the Contract Manager before work by the employee or subcontractor begins. Each employee and subcontractor determined to be a consultant under the Political Reform Act shall be subject to the same disclosure category or categories applicable to the Energy Commission staff who perform the same nature and scope of work as the consultant.
- C. No person, firm, or subsidiary thereof who has been awarded a consulting services agreement may submit a bid for, nor be awarded an agreement for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services agreement. This does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services agreement which amounts to no more than ten percent (10%) of the total monetary value of the consulting services agreement.

5. **WORK AUTHORIZATION PROCESS**

The Contract Manager shall prepare a Work Authorization (WA) directing the work the Contractor provides. Each WA shall be in writing, numbered sequentially and approved by the Contractor's Project Manager and Contract Manager before beginning work. The Contract Manager shall file each signed WA with the Commission Contracts Office. Each WA shall detail the following:

- Detailed Scope of Work and what task the WA falls within related to this Agreement, purpose, objective, the technology area, and identification of the Agreement/subcontractor team.

- All significant materials to be developed or services delivered. Identification of any materials to be furnished by the Energy Commission to the Contractor. The due dates for materials or services performed under the WA. The time period for the entire WA.
 - Estimated budget including person hours, hourly rates, travel expenses, and total cost of the WA.
- A. The Energy Commission reserves the right to require the Contractor to stop or suspend work on any WA. The Contract Manager shall provide notice in writing to the Contractor's Project Manager of the date work is halted or suspended. Costs incurred to that date shall be reimbursed in accordance with the termination clause.
- B. The actual costs of a completed WA shall not exceed the authorized amount, except under the following condition:
- If, in the performance of the work, the Contractor determines that the actual costs will exceed the estimated costs, Contractor shall immediately notify the Contract Manager. Upon such notification, the Contract Manager may:
- 1) Alter the scope of the WA to accomplish the work within the estimated costs; or
 - 2) Augment the dollar amount of the WA via an amendment; or
 - 3) Authorize the Contractor to complete the work for the actual costs; or
 - 4) Terminate the WA.

Each WA shall be incorporated into this Agreement. However, it is understood and agreed by both parties that all of the terms and conditions of this Agreement shall remain in force with the inclusion of any such WA. A WA shall in no way constitute an independent Agreement, other than as provided pursuant to this Agreement, nor in any way amend or supersede any of the other provisions of this Agreement.

EXHIBIT F

Agreement Contact List

Commission Contract Manager: NAME California Energy Commission 1516 Ninth Street, MS - ?? Sacramento, CA 95814 Phone: (916) ???-???? Fax: (916) ???-???? e-mail: ???@energy.state.ca.us	Contractor Project Manager: (Name) (Contractor Name) Address Phone: Fax: e-mail:
Commission Contracts Officer: NAME California Energy Commission 1516 Ninth Street, MS - 18 Sacramento, CA 95814 Phone: (916) ???-???? Fax: (916) 654-4423 e-mail: ???@energy.state.ca.us <i>Deliver confidential deliverables to this location <u>only</u>.</i>	Contractor's Administrator/Officer: (Name) (Contractor Name) Address Phone: Fax: e-mail:
Invoices, Progress Reports and Non-Confidential Deliverables to: Frank Taniguchi Accounting Office California Energy Commission 1516 Ninth Street, MS - 2 Sacramento, CA 95814 Phone: (916) 654-3906 Fax: (916) 653-1435 e-mail: ftaniguc@energy.state.ca.us	Contractor Accounting Invoicing Contact: (Name) (Contractor Name) Address Phone: Fax: e-mail:
Commission Legal Notices: Cheryl Raedel Manager, Contracts Office California Energy Commission 1516 Ninth Street, MS - 18 Sacramento, CA 95814 Phone: (916) 654-4392 Fax: (916) 654-4423 e-mail: craedel@energy.state.ca.us	Contractor Legal Notices: (Name) (Contractor Name) Address Phone: Fax: e-mail:

EXHIBIT G

Definitions

1. ***Affiliate of the Contractor*** means any natural person, corporation, partnership, joint venture, sole proprietorship or other business entity directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Contractor. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by agreement, or otherwise. For purposes of this Agreement, it is presumed that ownership or control of the voting power of more than fifty percent (50%) of the voting stock or partnership interests in an entity constitutes control of that entity.
2. ***Agreement Budget*** refers to the Energy Commission reimbursable and Contractor's Matching Fund expenditures for that portion of the Project covered by the Agreement.
3. ***Agreement Period*** is the length of this Agreement between the Energy Commission and the Contractor. The Contractor's Project may coincide with or extend outside the Agreement Period.
4. ***Date*** means calendar date.
5. ***Agreement Start Date*** is the date the Contractor may begin work that incurs expenses for which the Energy Commission will reimburse the Contractor. No work may begin until Department of General Services (DGS) approves the Agreement, if required.
6. ***Agreement End Date*** is the date the Contractor must stop work that incurs expenses for which the Energy Commission will reimburse the Contractor.
7. ***Confidential Information*** is information Contractor has submitted to the Energy Commission and has satisfactorily identified and which the Energy Commission has agreed to designate as confidential pursuant to Title 20 CCR 2501 and following (and amendments).
8. ***Economic Benefit*** for a Project co-funded using Energy Commission funds means the realization of economic gain or other tangible benefits by the Contractor or Affiliate of the Contractor (except bona fide third party purchasers of Contractor's commercial products) through the use of Project-Related Products and Rights, including but not limited to, operation, sale, distribution or manufacturing; or by any other transaction, including but not limited to, grant, rent, loan, equity, option, transfer, license or other fee; or by Otherwise Disposing of the Project-Related Products and Rights. The Energy Commission may rely upon professional accounting opinion in making a final determination of the dollar value of Gross Revenues, and such determination shall be the basis for calculating the royalty payment due the Energy Commission.
9. ***Equipment*** is defined as having a useful life of at least one year, having an acquisition unit cost of at least \$5,000, and purchased with Energy Commission funds. ***Equipment*** means any products, objects, machinery, apparatus, implements or tools purchased, used or constructed within the Project, including those products, objects, machinery, apparatus, implements or tools from which over thirty percent (30%) of the equipment is composed of Materials purchased for the Project. For purposes of determining depreciated value of equipment used in the Agreement, the Project shall terminate at the end of the normal useful life of the equipment purchased, funded and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of such equipment.

10. **Gross Revenues** means the gross Sales Price, rentals and other amounts received by Contractor from or on account of the Sale, lease, or other transfer or use of Project-Related Products and Rights, less sales tax paid. Gross Revenues shall be determined as above and in accordance with appropriate Federal cost principles and any Economic Benefit.
11. **Key Partners** are participants in the Project who are not receiving PIER funds or are not providing Match Funds but are integral to the outcome of the Project. Key Partners may be providing space, testing facilities, demonstration sites or a manufacturer or other implementer of the Project results.
12. **Key Personnel** are employees or consultants of the Contractor who are critical to the outcome of the Project. For example, they may have expertise in the particular field, or have experience that is not available from another source. Replacing these individuals may affect the outcome of the Project.
13. **Key Subcontractors** are contractors, subcontractors or vendors to the Contractor and who are critical to the outcome of the Project. As with Key Personnel, Key Subcontractors may have expertise in the particular field, or have experience that is not available from another source and replacement may significantly affect the Project. An employee of the Contractor's subcontractor or vendor may also qualify as "key."
14. **Match Fund Participant** means any party that supplies Match Funds to the Project.
15. **Match Funds** means cash or in-kind (non-cash) contributions provided by Contractor, subcontractors or other parties that will be used in performance of this Agreement.
16. **Materials** means the substances used in constructing a finished object, commodity, device, article or product.
17. **Otherwise Disposing Of** means (1) Project-Related Products and Rights not sold but delivered by the Contractor or Affiliate of the Contractor to others regardless of the basis for compensation, if any; and (2) Project-Related Products and Rights put into use by the Contractor or any third party for any purpose other than testing or evaluation of the Project-Related Products and Rights.
18. **Project** refers to the entire effort undertaken and planned by the Contractor and consisting of the work co-funded by the Energy Commission. The Project may coincide with or extend beyond the Agreement period.
19. **Project-Related Products and Rights** means any and all inventions, discoveries, machines, designs, computer software, products, devices, mechanisms, methods, protocols, processes, algorithms, flowcharts, diagrams, trade secrets, data, copyrights, patents, trademarks, proprietary rights, and the like created or made or discovered or first reduced to practice by the Contractor or other third party as a result, in whole or in part, of the Agreement award(s) and any and all updates, revisions, modification, enhancements, derivations, variations, continuations, renewals, and extensions thereto and all proceeds and products therefrom.
20. **Sale** is sale, license, lease, gift or other transfer of Project-Related Products and Rights.
21. **Sales Price** means Gross Revenues, excluding normal returns and allowances such as sales tax, freight and insurance, if applicable, derived from a Sale.
22. **Subject Invention** means any and all invention or discovery conceived, or first actually reduced to practice in the course of or under the Energy Commission-funded portion of this Agreement (i.e., that portion of this Agreement for which Contractor has invoiced the Energy Commission and received reimbursement) and includes any art, method, process, machine, manufacture design or composition

of matter, or any new and useful improvement thereof, whether patented or unpatented, under the patent laws of the United States of America or any foreign country.

23. **Technology** refers to the general subject area where the product or innovation will be used. For example, solar thermal electric generation is a Technology area; direct steam generation is an innovation in this Technology area.
24. **Terms Relating to Data**
- a) **Technical Data** or **Data** as used throughout this Agreement means recorded information regardless of form or characteristic, of a scientific or technical nature and used in the performance of this Agreement. It may, for example, document research; document experimental, developmental, demonstration, or engineering work; or be usable or used to define a design or process; or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, test specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of Technical Data include manufacturing techniques and methods, machinery, devices such as tools, products, or components, research and engineering data, engineering drawings and associated lists, specifications, engineering calculations, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical Data as used herein does not include financial reports, cost analyses and other information incidental to administration of this Agreement.
 - b) **Proprietary Data** is such data as Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Agreement is commenced. Proprietary Data also includes data of a proprietary nature produced during the course of this Agreement that is produced by Contractor or its subcontractors at their own expense.
 - c) **Generated Data** is that data that the Contractor collects, collates, records, deduces, reads out or postulates for use in the performance of this Agreement. In addition, any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Agreement at Energy Commission expense, together with complete documentation thereof, shall be treated as Generated Data.
 - d) **Deliverable Data** is that data which, under the terms of this Agreement, is required to be delivered to the Energy Commission.
25. A **Trade Secret** is any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented and which is generally known only to certain individuals with a commercial concern and are using it to fabricate, produce or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.
26. **Government Entity** is a governmental agency from California or any state or a state college or state university from California or any state. A local governmental entity or agency, including those created as a Joint Powers Authority. An auxiliary organization of the California State University, or a California community college. The Federal government. A foundation organized to support the Board of Governors of the California Community Colleges or an auxiliary organization of the Student Aid Commission established under Education Code 69522.

EXHIBIT H
Public Interest Energy Research (PIER) Subcontract Flow-Down Provisions

The following language must be included in all subcontracts executed by PIER contractors. This language is the minimum that must be contained in subcontracts. Contractor may include other provisions as well. Contractor should use this template and fill in the name of the Contractor and Subcontractor as appropriate in each place where there is a _____ blank.

=====

This Agreement is funded by or funded in part by the California Energy Commission (Energy Commission) Public Interest Energy Research (PIER) Program. _____ [Contractor] entered into a prime contract with the Energy Commission. This Agreement between _____ [Contractor] and _____ [Subcontractor] is a subcontract to the prime contract.

1. STANDARD OF PERFORMANCE

_____ [Subcontractor] shall be responsible in the performance of _____'s [Subcontractor] work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in scientific and engineering research fields. Any costs for failure to meet these standards, or otherwise defective services, which require re-performance, as directed by _____ [Contractor], shall be borne in total by the _____ [Subcontractor] and not the Energy Commission or _____ [Contractor]. In the event the _____ [Subcontractor] fails to perform in accordance with the above standard the following will apply:

- A. _____ [Subcontractor] will re-perform, at its own expense, any task, that was not performed to the reasonable satisfaction of _____ [Contractor]. Any work re-performed pursuant to this clause shall be completed within the time limitations originally set forth for the specific task involved. _____ [Subcontractor] shall work any overtime required to meet the deadline for the task at no additional cost to _____ [Contractor].
- B. _____ [Contractor] shall provide a new schedule for the re-performance of any task pursuant to this clause in the event that re-performance of a task within the original time limitations is not feasible.
- C. In the event _____ [Subcontractor] fails to perform in accordance with the foregoing standard of performance, _____ [Contractor] and _____ [Subcontractor] shall seek to negotiate in good faith an equitable resolution satisfactory to both parties.

2. RECORDKEEPING, COST ACCOUNTING AND AUDITING

- A. Recordkeeping. _____ [Subcontractor] shall maintain all records, documents or other evidence relating to direct and indirect expenses reimbursed to _____ [Subcontractor] hereunder, and to hours of employment on this Agreement by all employees of _____ [Subcontractor] for which _____ [Contractor] is billed. These records shall be sufficient to reflect all costs claimed to have been incurred in performing this Agreement.
- B. Accounting Procedures. _____'s [Subcontractor] costs shall be determined on the basis of the _____'s [Subcontractor] accounting system procedures and practices employed as of the effective date of this Agreement. _____'s [Subcontractor] accounting system shall distinguish between direct costs and indirect costs. All costs incurred for the same purpose,

in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this Agreement.

C. Allowability of Costs.

- 1) Allowable Costs. Allowable costs may include all costs, direct and indirect, incurred in the performance of work and capped as identified in the budget for this Agreement. Costs must be incurred within the term of the Agreement. Factors to be considered in determining whether an individual item of cost is allowable include (i) reasonableness of the item, (ii) allowability of the item to the work, and (iii) the terms and conditions of this Agreement.
- 2) Unallowable Costs. Some examples of unallowable costs include: contingency costs, imputed costs, fines and penalties, losses on contracts, excess profit taxes, and increased contract rates and fees for this Agreement.

3. **AUDIT**

_____ [Subcontractor] agrees that the Energy Commission, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. _____ [Subcontractor] agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. _____ [Subcontractor] agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, _____ [Subcontractor] agrees to include a similar right of the State to audit records and interview staff in any subcontract between _____ [Subcontractor] and a third party related to performance of this Agreement (“lower tier subcontracts”).

4. **PURCHASE OF EQUIPMENT**

If equipment is purchased with Energy Commission funds, the following applies:

- A. Equipment is defined as having a useful life of at least one year, having an acquisition unit cost of at least \$5,000, and purchased with Energy Commission funds. Equipment means any products, objects, machinery, apparatus, implements or tools purchased, used or constructed within the Project, including those products, objects, machinery, apparatus, implements or tools from which over thirty percent (30%) of the equipment is composed of materials purchased for the Project. For purposes of determining depreciated value of equipment used in the Agreement, the Project shall terminate at the end of the normal useful life of the equipment purchased, funded and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of such equipment.
- B. Materials means the substances used in constructing a finished object, commodity, device, article or product.
- C. Title to all non-expendable equipment purchased in part or in whole with Energy Commission funds shall remain with the Energy Commission. The Energy Commission will complete and file a UCC.1 with the Secretary of State’s Office for all such equipment.
- D. _____ [Subcontractor] shall assume all risk for maintenance, repair, destruction and damage to equipment while in the possession or subject to the control of _____ [Subcontractor].

_____ [Subcontractor] is not expected to repair or replace equipment that is intended to undergo significant modification or testing to the point of damage/destruction.

E. Upon termination of this Agreement, the Energy Commission may:

- 1) if requested by _____ [Contractor], authorize _____'s [Subcontractor] continued use of such equipment to further energy research in the public interest,
- 2) by mutual agreement with _____ [Contractor], allow _____ [Subcontractor] to purchase such equipment for an amount not to exceed the residual value of the equipment as of the date of termination of this Agreement, or
- 3) request that such equipment be delivered to the Energy Commission with any costs incurred for such return to be borne by the Energy Commission.

5. **RIGHTS OF PARTIES REGARDING DELIVERABLES, DATA & INTELLECTUAL PROPERTY**

A. Energy Commission's Rights in Deliverables

Deliverables and reports specified for delivery to the _____ [Contractor] for the Energy Commission's use under this Agreement shall become the property of the Energy Commission. The Energy Commission may use, publish, and reproduce the deliverables and reports subject to the provisions of clause 6 below.

B. Rights in Technical, Generated, and Deliverable Data

- 1) _____'s [Subcontractor's] Rights. All technical, generated and deliverable data produced under this Agreement shall be limited by the license retained by the Energy Commission in 2) below, and the rights the Energy Commission has in deliverables specified above in A).
- 2) Energy Commission's Rights. _____ [Subcontractor] shall provide Energy Commission Contract Manager (through _____ [Contractor]), with a copy of all technical, generated and deliverable data produced under this Agreement when requested by the Energy Commission. _____ [Subcontractor] is not required to copy and submit data the Energy Commission Contract Manager has identified as being unusable to the Energy Commission and the PIER program such as raw data that is too disaggregated or voluminous for practical application. Such Data shall be retained at _____'s [Subcontractor's] facility for inspection, review and possible copying by the Contract Manager for a minimum of three (3) years after final payment unless a longer period of records retention is stipulated.

Upon request by Contractor or Contract Manager, _____ [Subcontractor] shall provide the Energy Commission Contract Manager and any designated reviewer(s), access to review technical and generated data produced in the course of this Agreement that is not requested to be a deliverable.

For all technical, generated and deliverable data produced under this Agreement, the Energy Commission retains a no-cost, non-exclusive, non-transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, produce and to

authorize others to produce, translate, publish and use the data, subject to the provisions of clause 6 below.

- C. Exclusive Remedy. In the event the Energy Commission intends to publish or has disclosed data _____ [Subcontractor] considers confidential, _____'s [Subcontractor's] exclusive remedy is a civil court action for injunctive relief. Such court action shall be filed in Sacramento County, Sacramento, California.
- D. Waiver of Consequential Damages.

IN NO EVENT WILL THE ENERGY COMMISSION BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY FOR THE DISCLOSURE OF _____'s [SUBCONTRACTOR'S] CONFIDENTIAL RECORDS, EVEN IF THE ENERGY COMMISSION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. DAMAGES THAT THE ENERGY COMMISSION WILL NOT BE RESPONSIBLE FOR INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFIT; LOSS OF SAVINGS OR REVENUE; LOSS OF GOODWILL; LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT; COST OF CAPITAL; COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES, OR SERVICES; DOWNTIME; THE CLAIMS OF THIRD PARTIES INCLUDING CUSTOMERS; AND INJURY TO PROPERTY.

- E. Proprietary Data. Proprietary data owned by _____ [Subcontractor] shall remain with _____ [Subcontractor] throughout the term of this Agreement and thereafter. The extent of _____ [Contractor] or the Energy Commission access to the same and the testimony available regarding the same shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable hereunder. Upon request by _____ [Contractor] or the Energy Commission Contract Manager, _____ [Subcontractor] shall provide the Energy Commission Contract Manager and any designated reviewer(s) access to review _____ [Subcontractor's] proprietary data produced in the course of this Agreement that is not requested to be a deliverable. Neither _____ [Contractor] nor the Energy Commission shall disclose any _____'s [Subcontractor] proprietary data access or reviewed to any third party.
- F. Preservation of Data. Any data that is reserved to _____ [Subcontractor] by the express terms hereof, and pre-existing proprietary or confidential data that have been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, shall be preserved by _____ [Subcontractor] at _____'s [Subcontractor] own expense for a period of not less than three years after final payment, unless a longer period of records retention is stipulated.
- G. Destruction of Data. Before the expiration of three years or the stipulated records retention period and before changing the form of or destroying any technical, generated or deliverable data or trade secrets, _____ [Subcontractor] shall notify _____ [Contractor] of any such contemplated action and the Energy Commission may, within thirty (30) days after said notification, determine whether it desires said data to be further preserved. If the Energy Commission so elects, the expense of further preserving said data shall be paid for by the Energy Commission. _____ [Subcontractor] agrees that the Energy Commission may at its own expense, have reasonable access to said data throughout the time during which said

data is preserved. _____ [Subcontractor] agrees to use its best efforts to identify competent witnesses to testify in any court of law regarding said data or, at the Energy Commission's expense, to furnish such competent witnesses.

H. Patent Rights. Ownership of patent rights between ____ [Contractor] and _____ [Subcontractor] is not addressed in this paragraph. However, the Energy Commission retains certain patent rights in its prime contract with ____ [Contractor]. _____ [Subcontractor] acknowledges the following minimum Energy Commission patent rights for subject inventions: The Energy Commission retains a no-cost, nonexclusive, nontransferable, irrevocable, royalty-free, worldwide perpetual license to use or have practiced for or on behalf of the State of California subject invention(s) for governmental purposes. The owner of subject invention(s) must obtain agreements to effectuate this clause with all persons or entities, except for the U.S. Department of Energy (DOE), obtaining ownership interest in the patented subject invention(s). Previously documented (whether patented or unpatented under the patent laws of the United States of America or any foreign country) inventions are exempt from this provision.

I. March-In Rights. If _____ [Subcontractor] is the owner of a subject invention, _____ [Subcontractor] shall forfeit and assign to the Energy Commission, at the Energy Commission's request, all rights on a subject invention if either: 1) _____ [Subcontractor] fails to apply for a patent on subject inventions(s) developed under this Agreement within six months of conceiving or first actually reducing to practice the technology; or 2) _____ [Subcontractor] or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention. In this event, _____ [Subcontractor] agrees to relinquish all rights, subject to DOE reserved rights, on the subject invention to the Energy Commission. The Energy Commission will have the unfettered right to use and/or dispose of the rights in whatever manner it deems most suitable to help transfer the technology into the market place, including but not limited to, seeking patent protection, or licensing the invention.

J. Energy Commission's Rights to Invention. _____ [Subcontractor] and all persons and/or entities obtaining an ownership interest in subject invention(s) shall include within the specification of any United States patent application, and any patent issuing thereon covering a subject invention, the following statement:

THIS INVENTION WAS MADE WITH STATE OF CALIFORNIA SUPPORT UNDER CALIFORNIA ENERGY COMMISSION AGREEMENT NUMBER _____. THE ENERGY COMMISSION HAS CERTAIN RIGHTS TO THIS INVENTION.

K. Energy Commission's Interest in Inventions. If _____ [Subcontractor] perfects a patent application on any subject invention, _____ [Subcontractor] shall notify Contractor in order for the Energy Commission to prepare and file a Uniform Commercial Code (UCC.1) Financing Statement with the Secretary of State's Office.

L. Copyrights.

1) If _____ [Subcontractor] is the owner of a copyright, _____ [Subcontractor] agrees to grant the Energy Commission a royalty-free, no-cost nonexclusive, irrevocable, nontransferable worldwide, perpetual license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all copyrightable material first produced or composed in the performance of this Agreement.

- 2) _____ [Subcontractor] will apply copyright notices to all documents prepared for this Agreement that will be released to the public including reports, deliverables, articles submitted for publication and all reprints using the following form or such other form as may be reasonably specified by _____ [Contractor].

©[YEAR OF FIRST PUBLICATION OF DELIVERABLE],
[THE COPYRIGHT HOLDER'S NAME].
ALL RIGHTS RESERVED.

- 3) In the event ____ [Subcontractor] develops software that is not a deliverable under the Agreement, but is first produced or composed in the performance of the Agreement, and if ____ [Subcontractor] is the owner of the software, ____ [Subcontractor] shall grant the Energy Commission a royalty-free, no-cost, non-exclusive, irrevocable, non-transferable, worldwide, perpetual license to produce and use the software, its derivatives and upgrades for governmental purposes.

M. Intellectual Property Indemnity. _____ [Subcontractor] warrants that _____ [Subcontractor] will not, in its supplying of the work under this Agreement, knowingly infringe or misappropriate any intellectual property right of a third party, and that it will conduct a reasonable investigation of the intellectual property rights of third parties to avoid such infringement. _____ [Subcontractor] will defend and indemnify _____ [Contractor] and Energy Commission from and against any claim, lawsuit or other proceeding, loss, cost, liability or expense (including court costs and reasonable fees of attorneys and other professionals) to the extent arising out of: (i) any third party claim that a deliverable infringes any patent, copyright, trade secret or other intellectual property right of any third party, or (ii) any third party claim arising out of the negligent or other tortious act(s) or omission(s) by _____ [Subcontractor], its employees, lower tier subcontractors or agents, in connection with or related to the deliverables or the _____'s [Subcontractor's] performance thereof under this Agreement.

6. **LIMITATION ON DISCLOSURE OF INFORMATION**

- A. _____ [Subcontractor] must receive approval from _____ [Contractor] before disclosing to any third party the contents of any draft deliverable or report.
- B. After any document submitted has become a part of the public records of the State, _____ [Subcontractor] may, if it wishes to do so at its own expense, publish or utilize the same, and shall include the Legal and Copyright notices required above.
- C. In the event any public statement is made by the Energy Commission as to the role of _____[Subcontractor] or the content of any deliverable or report, ____ [Subcontractor] may, if it believes such statement to be incorrect, state publicly what it believes is correct.
- D. No record that is provided to _____ [Subcontractor] by the Energy Commission or ____ [Contractor] for _____'s [Subcontractor's] use in performing this Agreement and which has been designated as confidential information, or is the subject of a pending application for confidential designation, except as provided in Title 20, CCR Section 2505 and following (and amendments), shall be disclosed by _____ [Subcontractor], unless disclosure is ordered by a court of competent jurisdiction. At the election of _____ [Contractor] or the Energy Commission Contract Manager, ____ [Subcontractor], its employees and any lower tier

subcontractor shall execute a confidentiality agreement supplied by _____ [Contractor] or the Energy Commission.

- E. _____ [Subcontractor] acknowledges that each of its officers, employees, and lower tier subcontractors who are involved in the performance of this Agreement will be informed about these restrictions and be directed to abide by the above terms.
- F. Data provided to the Energy Commission by _____ [Subcontractor], which data the Energy Commission has not already agreed to keep confidential and which _____ [Subcontractor] seeks to have designated as confidential, or is the subject of a pending application for confidential designation, will not be disclosed by the Energy Commission except as provided in Title 20 CCR Sections 2506 and 2507 (and amendments), unless disclosure is ordered by a court of competent jurisdiction.

7. **NO FURTHER ASSIGNMENTS**

_____ [Subcontractor] shall not make any assignment of this Agreement to any third party without advance written consent of the _____ [Contractor].

8. **NON-DISCRIMINATION**

During the performance of this Agreement, _____ [Subcontractor] and any of its lower tier subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. _____ [Subcontractor] shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. _____ [Subcontractor] shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Energy Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. _____ [Subcontractor] shall give written notice of its obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement. _____ [Subcontractor] shall include the nondiscrimination and compliance provisions of this clause in all subcontracts between _____ [Subcontractor] and a lower tier subcontractor to perform work under this Agreement.

9. **STOP WORK**

_____ [Contractor] may, at any time, by written notice to _____ [Subcontractor], require _____ [Subcontractor] to stop all or any part of the work tasks in this Agreement. Stop work orders may be issued for reasons such as a Project exceeding budget, standard of performance, out of scope work, delay in Project schedule, misrepresentations and the like.

- A. Compliance. Upon receipt of such stop work order, _____ [Subcontractor] shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- B. Equitable Adjustment. An equitable adjustment shall be made by _____ [Contractor] based upon a written request by _____ [Subcontractor].

- C. Canceling a Stop Work Order. _____ [Subcontractor] shall resume the work only upon receipt of written instructions from the _____ [Contractor].

10. **TERMINATION**

[NOTE: SUBCONTRACT MUST CONTAIN TERMINATION RIGHTS OF THE CONTRACTOR SIMILAR TO THE CAUSE/FOR CAUSE OPTIONS BELOW. Contractor may use its own standard termination language as long as Contractor retains the right to terminate with and without cause. Contractor may use the language below if it does not have standard termination language. Contractor may add a right of Subcontractor to terminate, but Subcontractor's right to terminate is not encouraged, so sample language is not included here.]

This Agreement may be terminated as follows:

- A. In the event of breach by _____ [Subcontractor] of the conditions in this Agreement, _____ [Contractor] may, without prejudice to any of its legal remedies, terminate this Agreement for cause, upon five days written notice to _____ [Subcontractor].
- B. _____ [Contractor], may at its option, terminate this Agreement without cause, upon giving 30 days written notice to _____ [Subcontractor]. In such event, _____ [Subcontractor] agrees to use all reasonable efforts to mitigate its expenses and obligations under this Agreement.

11. **ACCESS TO SITES & RECORDS**

_____ [Contractor] and Energy Commission staff or its representatives shall have reasonable access to all Project sites and all records related to this Agreement. _____ [Subcontractor] shall ensure the same access rights for all lower tier subcontractors.

12. **CONFLICT OF INTEREST**

- A. Conflicts in General. _____ [Subcontractor] agrees to continuously review new and upcoming Projects in which members of the _____ [Subcontractor] team may be involved for potential conflicts of interest and report potential conflicts to _____ [Contractor].

NOTE: Section B applies to subcontracts under PIER Tech support contracts:

- B. Contracting.
- 1) Bidding Activities. _____ [Subcontractor] agrees not to bid as an independent consultant on the following:
 - a) A request for proposal (RFP) or Project on which _____ [Contractor] or _____ [Subcontractor] has provided assistance under this Agreement.
 - b) Every related RFP or subject that currently receives assistance or receives assistance during this Agreement under the PIER Program or intends to apply for such assistance under the PIER Program and makes that fact known to _____ [Contractor] or _____ [Subcontractor].
 - 2) Reviewing, Evaluation & Assistance Activities. _____ [Subcontractor] shall be disqualified from participating in the review, evaluation, or assistance of:

- a) Any Project seeking assistance under the PIER Program for which ____ [Subcontractor] has become an independent consultant in a situation not covered by 1) above; or,
 - b) Any Project for which, within twelve (12) months prior to the start date of this Agreement or at any time during this Agreement, ____ [Subcontractor] has provided assistance under a separate agreement to the Project proponent that is seeking assistance for the same Project under the PIER Program.
- 3) Lower Tier Subcontractors
____ [Subcontractor] shall require each of its lower tier subcontractors who will be involved in the performance of this Agreement to agree to the above terms. The terms of this paragraph shall remain in effect for the duration of this Agreement.

13. **LEGAL NOTICE**

All documents prepared for this Agreement that will be released to the public in hard copy, electronic or website format including but not limited to reports, deliverables, articles submitted for publication, and all reprints shall include the following:

LEGAL NOTICE

THIS REPORT WAS PREPARED AS A RESULT OF WORK SPONSORED BY THE CALIFORNIA ENERGY COMMISSION (ENERGY COMMISSION). IT DOES NOT NECESSARILY REPRESENT THE VIEWS OF THE ENERGY COMMISSION, ITS EMPLOYEES, OR THE STATE OF CALIFORNIA. THE ENERGY COMMISSION, THE STATE OF CALIFORNIA, ITS EMPLOYEES, CONTRACTORS, AND SUBCONTRACTORS MAKE NO WARRANTY, EXPRESS OR IMPLIED, AND ASSUME NO LEGAL LIABILITY FOR THE INFORMATION IN THIS REPORT; NOR DOES ANY PARTY REPRESENT THAT THE USE OF THIS INFORMATION WILL NOT INFRINGE UPON PRIVATELY OWNED RIGHTS. THIS REPORT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE ENERGY COMMISSION NOR HAS THE ENERGY COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION IN THIS REPORT.

14. **SURVIVAL**

It is understood and agreed that certain clauses shall survive completion or termination of this Agreement for any reason. The clauses include but are not limited to:

- Recordkeeping, Cost Accounting and Auditing
- Audit
- Purchase of Equipment
- Rights of Parties Regarding Deliverables, Data and Intellectual Property
- Access to Sites and Records